

IN THE CIRCUIT COURT OF PLEASANTS COUNTY, WEST VIRGINIA  
BUSINESS COURT DIVISION

BB LAND, LLC, a West Virginia Company,  
and JB EXPLORATION 1, LLC, a  
West Virginia Company,

Plaintiffs,

vs.

Civil Action No.: 18-C-2  
Presiding: Judge Lorensen  
Resolution: Judge Carl

**FILED IN OFFICE**

OCT 18 2019

DELLIE FARNSWORTH  
CIRCUIT COURT CLERK  
PLEASANTS COUNTY

BLACKROCK ENTERPRISES, LLC,  
a West Virginia Company, and  
MICHAEL L. BENEDUM,

Defendants.

**ORDER DENYING IN PART PLAINTIFFS' AND THIRD-PARTY DEFENDANTS'  
MOTION FOR PROTECTIVE ORDER**

This matter came before the Court this 18 day of October 2019 upon Plaintiffs BB Land, LLC and JB Exploration 1, LLC, and Third-Party Defendants Jay-Bee Production Company and Jay-Bee Oil & Gas, Inc.'s Motion for Protective Order. The Defendant and Third-Party Plaintiff Blackrock Enterprises, LLC (hereinafter "Defendant" or "Blackrock"), by counsel, Brian R. Swiger, Esq., and Plaintiffs, BB Land, LLC and JB Exploration 1, LLC, and Third-Party Defendants Jay-Bee Production Company and Jay-Bee Oil & Gas, Inc. (hereinafter "Plaintiffs"), by counsel, David A. Mohler, Esq., have fully briefed the issues necessary. A hearing was held on this matter on October 8, 2019, wherein David A. Mohler, Esq. appeared on behalf of the Plaintiffs, and Vivian H. Basdekis, Esq., D. Luke Thomas, Esq., and Brian R.

Swiger, Esq. appeared on behalf of the Defendants and Third-Party Plaintiffs. So, upon the full consideration of the issues, the record, and the pertinent legal authorities, the Court rules as follows.

### **FINDINGS OF FACT**

1. This matter was commenced with the filing of the Complaint on January 11, 2018, alleging causes of action for breach of contract (Count I); declaratory judgment (Count II); reformation of contract (Count III); tortious interference with contracts (Count IV); and fraud in the inducement (Count V). *See* Compl. The allegations stem from an alleged agreement wherein the parties would lease property in Pleasants County, West Virginia for the purpose of drilling exploratory wells for oil and/or gas, and the parties would jointly share in the risk and cost in developing the properties. *Id.* The agreement at issue is a complex financial agreement designated by the parties as a lease acquisition agreement (hereinafter “LAA”) to acquire oil and gas leases and property interests in Pleasants and Tyler Counties and to develop properties by drilling oil and gas wells. *See* Ctclm. and Th. Pty. Compl., p. 18-20, Ex. A. The location of the leased or bought oil and gas rights is known as the area of mutual interest (hereinafter “AMI”). *Id.* at 20, Ex. A.
2. On February 15, 2018, Defendant Blackrock filed its Answer, Counterclaim, and Third-Party Complaint of Blackrock Enterprises, LLC, alleging causes of action for breach of contract against Plaintiffs (Count I); breach of contract against Plaintiffs (Count II); breach of contract against Plaintiffs (Count III); breach of contract against Plaintiffs (Count IV); breach of contract against Plaintiffs (Count V); breach of duty of good faith and fair dealing against Plaintiffs (Count VI); breach of duty of good

faith and fair dealing against Plaintiffs (Count VII); breach of duty of good faith and fair dealing against Plaintiffs (Count VIII); anticipatory breach of contract against Plaintiffs (Count IX); breach of duty of good faith and fair dealing against Plaintiffs (Count X); conversion against the Jay-Bee Parties (Count XI); tortious interference with contracts and prospective economic relations against the Jay-Bee Parties and Plaintiffs (Count XII); tortious interference with contracts and prospective economic relations against the Jay-Bee Parties and Plaintiffs (Count XIII); trade libel and commercial disparagement against the Jay-Bee Parties (Count XIV); accounting against the Jay-Bee Parties (Count XV); declaratory judgment (Count XVI); and declaratory judgment (Count XVII). *See* Ctrclm. and Th. Pty. Compl.

3. On October 7, 2019, Plaintiffs and third-Party Defendants filed the instant Motion for Protective Order, seeking a court Order cancelling additional corporate depositions scheduled for October 9-11, 2019 and October 14-16, 2019. *See* Pl's Mot., p. 1, 5.
4. A hearing on this matter was set for October 8, 2019.
5. On October 8, 2019, Defendants filed their Response to Plaintiffs' and Third-Party Defendants' Motion for Protective Order, stating the motion should be denied and it was agreed upon that these corporate depositions would be continued. *See* Def's Resp., p. 1-2.
6. The Court now finds the instant Motion is ripe for adjudication.

### **CONCLUSIONS OF LAW**

The Court addresses the instant motion for protective order, filed pursuant to Rule 26 of the West Virginia Rules of Civil Procedure. Generally,

Civil discovery is governed by the West Virginia Rules of Civil Procedure, Rules 26 through 37. The Rules of Civil Procedure generally provide for broad discovery to ferret out evidence which is in some degree relevant to the contested issue.

Syl. Pt. 1, in part, *Evans v. Mutual Min.*, 199 W.Va. 526, 485 S.E.2d 695 (1997) (internal quotations and citations omitted).

Rule 26 of the West Virginia Rules of Civil Procedure governs general provisions concerning discovery. Rule 26(c) of the West Virginia Rules of Civil Procedure governs protective orders. Rule 26(c) provides, in pertinent part:

Upon motion by a party or by the person from whom discovery is sought, including a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court...may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (1) That the discovery not be had;
- (2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;
- (3) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
- (4) That certain matters not be inquired into or that the scope of the discovery be limited to certain matters;
- (5) That discovery be conducted with no one present except persons designated by the court;
- (6) That a deposition after being sealed be opened only by order of the court;
- (7) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;
- (8) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be open as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery.

W. Va. R. Civ. P. 26(c).

However, in general, Rule 26(b) provides:

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

W. Va. R. Civ. P. 26(b).

Plaintiffs and Third-Party Defendants seek to preclude additional depositions of Randy Broda and Brian Paugh, who are corporate designees of various entities and have both previously been deposed in this matter. *See* Pl's Mot., p. 1-2. Plaintiffs and Third-Party Defendants proffered at the hearing that they would be willing to supplement in writing Mr. Broda and Mr. Paugh. On the other hand, Defendants argue that there was a meeting of the minds between the parties that the depositions of Mr. Broda and Mr. Paugh were not complete, and a continuation of the depositions would need to occur at a later date. *See* Def's Resp., p. 3-4. Further, Defendants alleged at the hearing that Mr. Broda was extremely evasive as a witness, which affected the length of time needed to depose him. Defendants additionally proffered at the hearing that Mr. Broda and Mr. Paugh were noticed to testify as to multiple subject areas and as corporate designees for multiple entities involved in this litigation, some of which there was not time to get to during the initial depositions.

For example, Mr. Swiger explained at the hearing that Mr. Broda was to testify to twenty-nine subject areas, and Mr. Paugh was to testify to eleven subject areas. Defendants averred in their Response that some, but not all, of the topics Mr. Broda and Mr. Paugh were designated to cover were conducted previously, and the rest remain open and are not yet complete. *See* Def's Resp., p. 3. Additionally, with regard to the different entities' corporate depositions, Defendants averred that they need to complete two corporate depositions that were started but not completed, and needs to start six corporate depositions: (1) Mr. Paugh for JB Exploration 1, LLC; (2) Mr. Broda for BB Land, LLC; (3) Mr. Paugh for Jay-Bee Production Company; (4) Mr. Paugh for Jay-Bee Oil & Gas, Inc.; (5) Mr. Broda for Jay-Bee Oil & Gas, Inc.; and (6) Mr. Paugh's individual deposition. *Id.*

The Court, in considering all of the foregoing, and considering the substantial amount of time devoted to the depositions of Mr. Broda and Mr. Paugh, finds there are issues which still need to be discovered via the depositions of Mr. Broda and Mr. Paugh, but that the matter needs to come to a resolution as well. Therefore, the Court finds the continued deposition of Mr. Broda and Mr. Paugh is ORDERED, with a limit to eight more hours for each. Further, counsel is to instruct the witnesses to answer responsively and directly.

Further, it is ORDERED that any remaining depositions which need to take place are hereby limited to eight hours each, and any non-party witness is limited to four hours each.

The Court also considers the date set for the deposition. It was proffered that Mr. Broda and Mr. Paugh were not available for the dates set by notice of deposition for October 9-11, 2019 and October 14-16, 2019, respectively, due to family/medical issues and travel conflicts. *See* Pl's Mot., p. 5. Defendants, on the other hand, voiced difficulty spanning weeks with regard to setting deposition dates. *See* Def's Resp., p. 8. It is therefore ORDERED that any party in this

civil action is directed and required to give their availability within three working days after receiving a written request for a date for a deposition, after which the requesting party may set the deposition at their convenience. An e-mail is a sufficient writing to request a deposition. The date which is offered must be within thirty days of the day offered.

For all these reasons, the Court must find Plaintiffs BB Land, LLC and JB Exploration 1, LLC, and Third-Party Defendants Jay-Bee Production Company and Jay-Bee Oil & Gas, Inc.'s Motion for Protective Order must be denied in part.

### CONCLUSION

Accordingly, it is hereby ADJUDGED and ORDERED that Plaintiffs BB Land, LLC and JB Exploration 1, LLC, and Third-Party Defendants Jay-Bee Production Company and Jay-Bee Oil & Gas, Inc.'s Motion for Protective Order is hereby DENIED in part. The parties shall proceed as ordered in this Order. The Court notes the objections and exceptions of the parties to any adverse ruling herein. The Court directs the Circuit Clerk to distribute attested copies of this order to all counsel of record, and to the Business Court Central Office at Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.  
Attest: Millie Farnsworth, Circuit Clerk  
Pleasants County of West Virginia

*Millie Farnsworth*



JUDGE MICHAEL D. LORENSEN  
JUDGE OF THE WEST VIRGINIA  
BUSINESS COURT DIVISION